

Part 537 - Service Contracting

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Parent topic: General Services Administration Acquisition Manual

Subpart 537.1 - Service Contracts—General

537.101 Definitions.

“Contracts for building services” means contracts for services relating to the operation and maintenance of a building (e.g., janitorial, window washing, snow removal, trash removal, lawn and grounds care), inspection, maintenance, repair or replacement of building systems or equipment (e.g., elevators, air-conditioning, heating systems, and protection or guard service).

537.102-70 Application of performance-based acquisition (PBA) policy for leases and leasehold interests in real property.

GSA contracting activities are not required to use PBA methods for leases and leasehold interests in real property. However, contracting activities are not precluded from using PBA methods when contracting for leases or leasehold interests in real property if using PBA best meets the

Government's needs.

537.104 Personal Services Contracts.

(a) *General.* GSA is generally not authorized to award personal service contracts. Personal services contracts are often triggered by perception, in particular when it is hard to differentiate between contractor employees and Federal employees. GSA contracting activities should avoid engaging in personal services contracts as described in FAR Subpart 37.104, unless excepted (see paragraph (b)), and work to establish and administer contracts such that the risk of the appearance of personal service contracts is mitigated and documented in the file. For more information on how to administer service contracts and avoid inappropriate personal service contract perception, see [537.504](#).

(b) *Exceptions.* There are limited exceptions in which GSA may actively engage in personal service type contracts:

(1) A contracting officer may enter into a personal services contract if the acquisition is being conducted on behalf of another agency who has statutory authority to enter into personal service contracts specific to that acquisition. The contracting officer must obtain the written concurrence of the Office of Legal Counsel and the Contracting Directors prior to issuing a solicitation.

(2) A contracting officer may enter into a personal services contract for GSA use only after obtaining the written concurrence of the Office of Legal Counsel and of the Contracting Director. See [FAR 37.104\(e\)](#) and GSA Order ADM 5000.4B November 14, 2014.

(3) GSA has authority to enter into contracts for personal services for Information Technology, per 40 USC 321(c)(1)(A)(iii), only when the contract is less than one year in duration, after meeting the requirements above.

(c) *Delegating Responsibilities.* Contracting officers must ensure any contracting officer's representative (COR) delegation letter includes language regarding personal service contract responsibilities. Standard delegation language can be found on GSA's Acquisition Portal at <https://insite.gsa.gov/acquisitionportal>.

537.106 Funding and term of service contracts.

[517.101](#) identifies GSA-specific statutory authority for multiyear contracts for certain services.

537.110 Contract clauses.

(a) *Contracts for building services.* Except for solicitations and contracts for building services placed under FAR [subpart 8.7](#), insert the clause at [552.237-71](#), Qualifications of Employees, in solicitations and contracts for building services that are anticipated to exceed the simplified acquisition threshold.

(b) *Contracts for guard services.* Insert the clause at [552.237-72](#), Prohibition Regarding "Quasi-Military Armed Forces," in solicitations and contracts for guard services.

Subpart 537.2 - Advisory and Assistance Services

537.201 Definitions.

As used in this subpart—

Evaluation or analysis of a proposal means proposal evaluation as described in FAR 15.305. It includes: Cost or price evaluation using cost or price analysis, as defined in FAR 15.404.

Proposal means a proposal submitted for an initial contract award. (See FAR 37.203(d)). It does not include proposals submitted after contract award, such as value engineering proposals, proposals related to contract modifications, claims, or other contract administration actions.

Readily available means that employees with the requisite training and capability are employed by the agency, capable of handling additional work relating to other duties as assigned by management, and that the travel and other costs associated with using covered personnel does not exceed the projected cost of a contract for evaluation and analysis services.

Requisite training and capability means training and capability necessary to successfully perform the task or contract at issue in the time and in the manner required. It may include relevant experience, recent performance of work of similar size and scope, specific training and other factors that the contracting officer determines are necessary to the successful performance of the task or contract at issue.

537.204 Guidelines for determining availability of personnel.

(a) *Authority.* The contracting officer is authorized to make the determinations required by FAR 37.204 unless the HCA designates another agency official.

(b) *Policy.* The contracting officer, or the HCA's designee, must make the determination whether GSA personnel with the requisite training and capabilities are readily available to perform the evaluation or analysis before issuing a solicitation which includes evaluation and analysis services (see FAR 37.205).

(c) *Identifying qualified personnel.* The contracting officer, or the HCA's designee, must base the determination on information received in response to a survey conducted as follows:

(1) If the estimated cost of evaluation and analysis services to be obtained under a contract or order is less than the micropurchase threshold, the administrative cost and time associated with conducting the search and other costs, such as travel, will likely exceed the cost of providing the services under the contract or order. In this case, the survey need only include the appropriate Assistant Commissioner, Assistant Regional Administrator, or designee within the contracting organization at the location where the services are to be performed.

(2) If the estimated cost of the evaluation and analysis services to be obtained under a contract or order is expected to exceed the micropurchase threshold, the survey must include all of the following:

(i) The appropriate Assistant Commissioner, Assistant Regional Administrator, or designee

at the location where the services are to be performed, and managers within other GSA Regions and Central Office of the contracting organization.

(ii) Other Federal agencies that are reasonably expected to have covered personnel with the requisite training and capability at the location where the services are to be performed.

(d) *Decisions on availability of personnel.* The contracting officer, or the HCA's designee, should request that decisions on availability be made by a management official at a level higher than the employee's immediate supervisor.

(e) *Documentation.* The determination required by FAR 37.204 may be incorporated in the acquisition plan or made a part of another document prepared in the normal course of a procurement action. The file should, at a minimum, describe:

(1) *Who was surveyed and a summary of the responses received;*

(2) *The circumstances requiring the use of outside evaluators;*

(3) *Actions GSA will take to avoid organizational or other conflicts of interest under FAR 9.5;*
and

(4) *The competitive relationship between prospective offerors, including proposed subcontractors, and the prospective evaluator(s).*

(f) *Indefinite delivery contracts for evaluation and analysis services.* You may issue an indefinite delivery contract for evaluation and analysis services if there is a reasonable expectation that there will be occasions when personnel with the requisite training and capabilities will not be readily available to perform the evaluation and analysis services covered by the contract.

(1) Before issuing a solicitation for an indefinite delivery contract, the appropriate agency official should first assess the ability of the Federal Supply Schedule Program to support the need and consider manpower and workload projections over the proposed contract period. This should help avoid unnecessarily incurring the cost of soliciting offers and awarding a contract. Document the acquisition file accordingly.

(2) The appropriate agency official should establish procedures for making determinations regarding particular evaluations before orders are placed under the contract.

537.270 Contract clause.

Insert the clause at [552.237-73](#), Restriction on Disclosure of Information, in solicitations and contracts for proposal evaluation and analysis services.

Subpart 537.5 - Management Oversight of Service Contracts

537.504 Contracting officials' responsibilities.

(a) Below is a non-exhaustive list of techniques the acquisition team can use to effectively manage and oversee service contracts, while avoiding the appearance of prohibited personal service

contracts described in FAR 37.104(d)—

(1) Identification. Have contractor staff clearly identify themselves as contractors in both email signature lines and identity badges.

(2) Communication of roles and responsibilities. During the contract kickoff meeting let the contractor and their personnel know how work assignments will be communicated and who should be included in the communication.

(3) Clear terms and conditions. Clearly define performance roles, expectations, and deliverables in the terms and conditions of the contract. Have terms and conditions specify that the contractor supervise their staff onsite when feasible.

(4) Contract type. Firm fixed price (FFP) contract type is preferable for work performed that could have the appearance of personal services, since other contract types require more Government oversight which could lead to the appearance of personal services; however all contract types are susceptible to perceptions that can prompt personal services.

(5) Limit who can assign work. Contractor assignments should be communicated by the contracting officer, or COR, directly to one representative for the contractor (such as a contractor's team lead or program manager).

(6) Avoid ad hoc work assignments. Avoid ad hoc work assignments which can create a personal services relationship, and may also cause "scope creep" to the contract, which places the Government at risk of a future claim.

(7) Do not provide managerial or administrative support to contractors. To avoid the appearance of personal services, do not approve contractor staff's performance plans or leave.

(8) Computer system access. Avoid personal services by limiting the electronic systems, and roles within systems, that contractors may have access to (*e.g.*, do not provide approval access in any system in which there may be an obligation of funds, such as a contract writing system).

Subpart 537.6 - Performance-based Acquisition

537.601 General.

Contracting Officers are encouraged to use the Steps to Performance-Based Acquisition (SPBA) available at <https://pba.app.cloud.gov/app/#/pba>.